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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION NINE

IN THE MATTER OF:
Quince Street Burn Site
San Diego, California

City of San Diego,

AGREEMENT FOR REMOVAL ACTION

U.S. EPA Region 9
CERCLA Docket No. 9-2002-0001

Proceeding Under Sections 104 and 122 of
the Comprehensive Environmental
Response, Compensation, and Liability Act,
as amended, 42 U.S.C. §§ 9604 and 9622

DOCUMENT NO. RR-296257
FILED APR 09 2002
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

I. JURISDICTION AND GENERAL PROVISIONS

1. This Agreement for Removal Action ("Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and the City of San Diego (the "City,"). This Agreement provides for the performance of a Removal Action by EPA and the assumption of response costs by the City at or in connection with the former burn site property located near the corner of 38th Street and Quince Street, in San Diego, California, the "Quince Street Site" or the "Site." The City desires EPA's assistance in implementing the Removal Action. The City is entering into this Agreement for the purpose of enabling EPA's performance of the Removal Action.

2. This Agreement is entered into under the authority vested in the President of the United States by Sections 104 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604 and 9622, as amended ("CERCLA").

3. EPA has notified the State of California of this action.

4. EPA and the City recognize that this Agreement has been negotiated in good faith and that neither the actions undertaken by the City in accordance with this Agreement, nor the fact that the City has entered into the Agreement shall constitute an admission of any fact, fault, legal issue or liability. The City does not admit, and retains the right to controvert in any proceedings other than proceedings to implement or enforce this Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Agreement. The City agrees to comply with and be bound by the terms of this Agreement and further agrees that it will not contest the basis or validity of this Agreement or its terms in proceedings to enforce this Agreement.

II. PARTIES BOUND

5. This Agreement applies to and is binding on EPA and on the City. Any change in operation or status of the City shall not alter the City's responsibilities under this Agreement.

III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. The Parties agree that the terms of this Agreement, including defined terms, shall not be interpreted as an admission of any factual or legal issue. Whenever terms listed below are used in this Agreement, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

b. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

c. "Effective Date" shall be the effective date of this Agreement as provided in Section XIX.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

e. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time that the interest accrues. The rate of interest is subject to change on October 1 of each year.

f. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

g. "Agreement" shall mean this Agreement for Removal Action, EPA Docket No. 9-2002-0001.

h. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral.

i. "Parties" shall mean EPA and the City.

j. "RCRA" shall mean the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act), as amended, 42 U.S.C. §§ 6901, *et seq.*

k. "Removal Action" shall mean all activities to assess, characterize and remove hazardous substances from the Site, and also shall include the activities specified in the Removal Action Workplan that the City provides to EPA pursuant to this Agreement.

l. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

m. "Waste Material" shall include 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and 4) any additional materials identified in the Removal Action Workplan that the City provides to EPA pursuant to this Agreement.

IV. FINDINGS OF FACT

7. The Quince Street Site is a former burn site that now is within a residential neighborhood near 38th Street and Quince Street, in the City of San Diego.

8. Ash and pollutants and contaminants remain at the Site from the historic burn activities, including lead at levels that may threaten public health or welfare or the environment. The area of contamination includes thirteen private residential properties, a City right of way, and a CalTrans right of way.

9. The City is entering into this Agreement to provide the most timely and efficient removal of burn ash and Waste Materials from the Site. The City believes that EPA can more properly and promptly undertake or supervise the Removal Action within the residential neighborhood to mitigate the potential health threats to residents within the community.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

10. Based on the Findings of Fact set forth above, EPA has determined that:

a. The Quince Street Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contaminants at the Site, as identified in the Findings of Fact above, include "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. The City is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. The City is an appropriate party to enter into this agreement for a response action pursuant to Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a).

e. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The Removal Action provided by this Agreement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Agreement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. WORK TO BE PERFORMED

a. Obligations of the City of San Diego

11. Within 10 days after the Effective Date of this Agreement, the City shall provide to EPA an advance payment of \$200,000, to be applied to costs, both direct and indirect, that the United States will incur in the performance of this Agreement. EPA shall deposit the payment into the San Diego Quince Street Special Account. Amounts paid by the City under this Agreement and deposited into the San Diego Quince Street Special Account shall be retained and used to conduct or finance the Removal Action at the Site. The City may, in its discretion, advance additional funds for deposit into the San Diego Quince Street Special Account. The City shall make timely payments for all additional costs that the EPA incurs in the Removal Action that are not reimbursed from the San Diego Quince Street Special Account, as provided in Section VIII. The Parties agree that the total of all payments from the City for this Removal Action shall not exceed \$1,300,000, except as agreed by the City.

12. The City shall provide to EPA a Site Characterization Report stating an assessment of the Site, including an assessment to delineate the limits of the historic burn site contamination. The City shall provide to EPA a Removal Action Workplan that identifies the hazardous substances subject to the Removal Action, the area of the Removal Action, the preferred method of removal of hazardous substances, and a schedule for conducting the Removal Action.

13. The City shall perform all necessary community out reach and education regarding the Removal Action, and provide to EPA a Community Health and Safety Plan. The City shall offer to temporarily relocate residents affected by the Removal Action in a manner consistent with standards identified in the Community Health and Safety Plan.

14. The City shall perform all required coordination with other local and state agencies, which may include obtaining access agreements or traffic control permits, as necessary to conduct the Removal Action. For any area subject to the Removal Action in areas owned by or in possession of a person other than the City, the City shall use its best efforts to obtain all necessary access agreements within 15 days after the Effective Date, or as otherwise specified in writing by EPA. The City shall immediately notify EPA if, after using its best efforts, it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. The City shall describe in writing its efforts to obtain access. EPA may then assist the City in gaining access to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate and as agreed by the City. All reasonable costs and attorney's fees that EPA incurs in obtaining such access shall be chargeable against the San Diego Quince Street Special Account. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

15. The City shall be responsible for handling and managing all media interests and providing clean soil as needed for application at the Site after the removal of hazardous substances. The City shall ensure that its contractors, subcontractors and representatives receive

a copy of this Agreement and comply with this Agreement. The City shall be responsible for any noncompliance with its obligations under this Agreement.

b. Obligations of the EPA

16. EPA shall conduct the Removal Action in accordance with the Removal Action Workplan and in compliance with the Community Health and Safety Plan. Conduct of the Removal Action shall include: removal of contaminated soils from the Site pursuant to the Removal Action Workplan; lawful transportation of the contaminated soils removed from the Site; disposal of all contaminated soils removed from the Site at a facility authorized to accept such Waste Materials and approved by the EPA and the City; installation of a liner or other type of permeable delineating feature at the bottom of all excavated areas to physically indicate the limits of known clean soil; installation of clean soil provided by the City in all excavated areas, compacted to the preexisting grades to allow for adequate drainage of each property and subsequent landscaping; and compliance with all applicable federal, state and local laws, ordinances, regulations, and permits in carrying out all of the above activities and all associated work. EPA may employ, within its sole discretion, properly licensed, qualified, and experienced contractors to conduct the Removal Action in accordance with this Agreement. Prior to employing any contractor for the Removal Action, EPA shall require such contractor to: (1) name the City, its elected officials, officers, agents and employees as additional insureds on all insurance coverage provided to EPA pursuant to its contracts with EPA; and (2) name the City as a co-obligee on all performance bonds, payment bonds, and labor and materials bonds provided under its contracts with EPA. EPA shall furnish proof to the City of the preceding requirements prior to employing each contractor at the Site.

17. EPA shall provide to the City appropriate documentation of the lawful transport and disposal of all contaminated soils promptly after removal from the Site. EPA also shall conduct confirmation soil sampling and analysis to demonstrate that the Removal Action is complete.

18. EPA shall provide an On-Scene Coordinator ("OSC") and any other qualified personnel, as necessary, to oversee the Removal Action. On behalf of EPA, the OSC shall be responsible for the technical implementation of the Removal Action, and shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Agreement, or to direct any other action at the Site for the protection of public health and welfare and the environment.

19. Prior to conducting the Removal Action, EPA shall prepare a Health and Safety Plan to promote Site and community safety, and which shall include a contingency plan addressing Waste Materials that are not identified in the Site Characterization Report or the Removal Action Workplan. EPA shall perform air, radiation and other monitoring and sampling, as needed, to promote the protection the public and the environment, and to identify additional Waste Materials that are not identified in the Site Characterization Report or the Removal Action Workplan. EPA shall confer with the City regarding such additionally identified Waste Materials, and may provide a response action for such additionally identified Waste Materials by

subsequent agreement or modification of this Agreement. Nothing in this Agreement shall affect or impair EPA's authority to provide a response action to such additionally identified Waste Materials, within its discretion, for the protection of public health and welfare and the environment.

20. EPA shall prepare and provide to the City reasonably detailed invoices of all costs, both direct and indirect, incurred by EPA in performance of the Removal Action and charged against the San Diego Quince Street Special Account. EPA shall first apply the advance payment described in Paragraph 11 against such costs. Costs incurred by EPA for the Removal Action that are in excess of such advance payment amount shall be identified as such in the invoices. EPA may, in its discretion, submit partial invoices to the City; however, EPA shall make all efforts to submit invoices stating each cost incurred within six months of incurring such costs. EPA shall send these statements to:

City of San Diego
Environmental Service Department
9601 Ridgehaven Court, Suite 310
San Diego, California 92123
Attn: Sylvia Castillo, Environmental Protection Division

Additionally, EPA shall maintain records of the Removal Action and provide such records to the City to support the City's preparation of a final site characterization report. EPA shall review and comment on any draft final site characterization report that the City provides to EPA.

VII. THE SAN DIEGO QUINCE STREET SPECIAL ACCOUNT

21. The City may make all payments identified in Paragraph 11 to the San Diego Quince Street Special Account by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to the City by EPA, or by check made payable to "EPA Hazardous Substance Superfund/San Diego Quince Street Special Account." Each check shall reference the name and address of the City, the San Diego Quince Street Site, the EPA Site ID Number 09JDRV00, and the EPA docket number 9-2002-0001, and shall be sent to:

Hazardous Substance Superfund
San Diego Quince Street Special Account
U.S. Environmental Protection Agency
Region 9, Attn: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

At the time of each payment, the City shall send a written notice of payment identifying the Site name and the EPA docket number for this Agreement. The statement also shall include the EPA Site ID Number 09JDRV00. At the time of each payment, the City shall send the written notice of payment to:

Barbara Lee
U.S. Environmental Protection Agency, Region 9
(SFD-9)
75 Hawthorne Street
San Francisco, California 94105

and to:

David Wood
U.S. Environmental Protection Agency, Region 9
(PMD-6)
75 Hawthorne Street
San Francisco, California 94105

22. EPA shall charge all direct and indirect costs that it incurs conducting the Removal Action pursuant to this Agreement against the San Diego Quince Street Special Account.

23. In the event that available funds within the San Diego Quince Street Special Account are insufficient to cover incurred costs for the Removal Action, EPA shall submit an invoice for reimbursement, as provided in Paragraph 20, subject to the limits and directions stated in Paragraphs 11 and 21, and Section VIII. If the City fails to timely reimburse EPA for costs stated in an invoice that EPA has provided to the City, EPA may, in its discretion, halt further conduct of the Removal Action until the City has made such reimbursement and paid all appropriate Interest and penalties.

VIII. REIMBURSEMENT OF FEDERAL RESPONSE COSTS

24. Within 30 days of the date of each invoice that EPA submits to the City (the "due date"), the City shall deposit to the San Diego Quince Street Special Account such monies to reimburse EPA for all costs stated in the invoice that EPA has incurred in the Removal Action, and which are in excess of the advance payment described in Paragraph 11. The City shall make reimbursement payments in the same manner provided in Paragraph 21.

IX. FAILURE TO REIMBURSE FEDERAL RESPONSE COSTS

25. In the event that any payment required by Paragraph 24 is not made by the due date, Interest shall accrue on the unpaid balance from the due date through the date of payment.

26. If any amounts due to EPA under Paragraph 24 are not paid within 30 days after the date due, the City shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 25, up to \$1000 per violation per day that such payment is late. Stipulated penalties are due and payable within 30 days of the date that EPA demands payment in writing of the penalties. All payments to EPA under this Paragraph shall be made by certified or cashier's

check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the City, the San Diego Quince Street Site, the EPA Site ID Number 09JDRV00, and the EPA docket number 9-2002-0001, and shall be sent to:

Hazardous Substance Superfund
U.S. Environmental Protection Agency
Region 9, Attn: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

At the time of payment of any penalty pursuant to this Paragraph, the City shall send notice as provided in Paragraph 21.

27. Penalties shall accrue as provided in Paragraph 26 regardless of whether EPA has notified the City of the violation or made a demand for payment, but need only be paid on demand. All penalties shall begin to accrue on the day after payment is 30 days past due, and shall continue to accrue through the final day of correction.

28. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the Interest or penalties that has accrued pursuant to this Agreement.

X. COVENANT NOT TO SUE BY EPA

29. In consideration of the payments that will be made by the City under the terms of this Agreement, and except as otherwise specifically provided in this Agreement, EPA covenants not to sue or to take administrative action against the City pursuant to Section 122(f) of CERCLA, 42 U.S.C. § 9622(f), regarding hazardous substances, pollutants and contaminants, or other Waste Materials addressed in the Removal Action Workplan, for performance of the Removal Action, or for payment of costs incurred in the performance of the Removal Action. This covenant not to sue shall take effect on completion of the Removal Action and the City's fulfillment of the conditions and obligations of this Agreement. This covenant not to sue extends only to the City and does not extend to any other person.

30. EPA recognizes that the City has, of its own accord, promoted the completion of the Removal Action and assumed the responsibility for costs as stated in this Agreement. The Removal Action is intended to abate the impact or threats of impact to human health and the environment from the Site. Therefore, and subject to the facts as set forth in this Agreement, the completion of the Removal Action and the fulfillment of the conditions and obligations of this Agreement, EPA does not anticipate the need for EPA to conduct further response activities at the Site, nor does EPA anticipate incurring costs beyond those to be reimbursed by the City as provided by this Agreement. Accordingly, EPA does not anticipate the need to initiate any action against the City of San Diego seeking civil penalties, cost recovery or injunctive relief regarding the Quince St. Site. This Paragraph is not intended to be a waiver of or covenant against existing

or future claims, rights or privileges except as otherwise stated in this Agreement. This Paragraph shall not preclude any subsequent action by EPA to assess, respond to, or undertake any enforcement action with regard to conditions at the Site that are unknown as of the Effective Date of this Agreement.

XI. RESERVATIONS OF RIGHTS BY EPA

31. Except as specifically provided in this Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, except as specifically provided in this Agreement, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the City in the future to perform additional activities pursuant to CERCLA or any other applicable law.

32. The covenant not to sue set forth in Section X above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Agreement is without prejudice to, all rights against the City with respect to all other matters, including, but not limited to:

- a. claims based on a failure by the City to meet a requirement of this Agreement;
- b. liability for costs, both direct and indirect, that EPA incurs in the Removal Action, and which are not covered by the advance payment described in Paragraph 11 and not otherwise reimbursed to EPA pursuant to Paragraphs 23 and 24;
- c. criminal liability;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- f. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

XII. COVENANT NOT TO SUE BY THE CITY

33. The City covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, for performance of the Removal Action

in accordance with the Removal Action Workplan or this Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising under the United States Constitution, the State of California Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

34. Except as provided in Paragraph 36, these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section XI, but only to the extent that the City's claims or causes of action arise from the Removal Action or otherwise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

35. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

36. The City agrees not to assert any claims and to waive all claims or causes of action that the City may have for contribution for response costs against any person where the person's liability to the City with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of i) 0.002% of the total volume of waste at the Site, or ii) 110 gallons of liquid materials or 200 pounds of solid materials. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site.

XIII. OTHER CLAIMS

37. By issuance of this Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of the City. The United States or EPA shall not be deemed a party to any contract entered into by the City or its employees, agents, contractors, or consultants in carrying out actions pursuant to this Agreement.

38. Except as expressly provided in Section X (Covenant Not to Sue by EPA), nothing in this Agreement constitutes a satisfaction of or release from any claim or cause of action against any person not a party to this Agreement, for any liability such person may have under CERCLA,

other statutes, or common law, including but not limited to any claims of the United States for costs, damages and Interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

39. No action or decision by EPA pursuant to this Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XIV. INDEMNIFICATION

40. The City shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of the City, its employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Agreement. In addition, the City agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of the City, its employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of the City in carrying out activities pursuant to this Agreement. Neither the City nor any such contractor shall be considered an agent of the United States.

41. The United States shall give the City notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with the City prior to settling such claim.

42. The City waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between the City and any person, other than the United States, its officials, agents, contractors, subcontractors, employees and representatives, for performance of work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, the City shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of the City and any person, other than the United States, its officials, agents, contractors, subcontractors, employees and representatives, for performance of the Removal Action, including, but not limited to, claims on account of construction delays.

XV. MODIFICATIONS

43. The OSC may make modifications to any plan or schedule or Removal Action Workplan in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. However, no such modifications by the OSC shall be considered part of the Removal Action

unless the City agrees in writing. Any other provisions or requirements of this Agreement may be modified in writing by mutual agreement of the parties.

44. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by the City shall relieve the City of its obligation to comply with each requirements of this Agreement, except as to those requirements that are formally modified in writing.

XVI. ADDITIONAL REMOVAL ACTION

45. If EPA determines that additional response actions not included in the Removal Action Workplan are necessary to protect public health, welfare, or the environment, EPA will notify the City of that determination. Unless otherwise stated by EPA, within 30 days of receipt of notice from EPA that additional response actions are necessary to protect public health, welfare, or the environment, the City shall negotiate with EPA a means to conduct the additional response actions. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XV (Modifications).

XVII. NOTICE OF COMPLETION OF WORK

46. When EPA determines that the Removal Action has been fully performed in accordance with this Agreement, with the exception of any continuing obligations required by this Agreement, EPA will provide written notice to the City.

XVIII. SEVERABILITY/INTEGRATION/APPENDICES

47. If a court issues an order that invalidates any provision of this Agreement or finds that the City has sufficient cause not to comply with one or more provisions of this Agreement, the City shall remain bound to comply with all provisions of this Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

48. This Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the Removal Action. The parties acknowledge that there are no representations, agreements or understandings relating to the Removal Action other than those expressly contained in this Agreement.

XIX. EFFECTIVE DATE

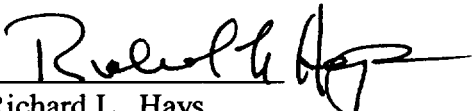
49. The effective date of this Agreement shall be the later of May 1, 2002, or the date that this Agreement is signed by the Chief of the Response, Planning and Assessment Branch of EPA. The Parties anticipate that the Removal Action will be completed within one year of the Effective Date of this Agreement.

(Signatures on following pages.)

The undersigned representative(s) of the City and the EPA certify that they are fully authorized to enter into this Agreement.

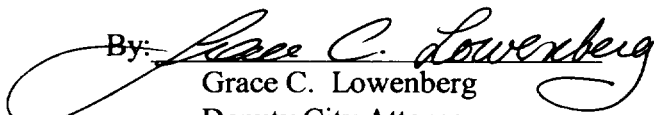
Dated this ___ day of APR 09 2002, 2002.

City of San Diego,
A Municipal Corporation

By: 
Richard L. Hays
Director, Environmental Services Department

I HEREBY APPROVE the form and legality of the foregoing Agreement, this 18th day
of April, 2002.

CASEY GWINN, CITY ATTORNEY

By: 
Grace C. Lowenberg
Deputy City Attorney

(EPA signature on following page.)

Agreed this 22 day of April, 2002.

BY: Daniel A. Meer DATE: April 22, 2002

Daniel A. Meer

Branch Chief, Response, Planning and Assessment Branch

U.S. Environmental Protection Agency, Region 9

EFFECTIVE DATE: ^{OK} May 1, 2002

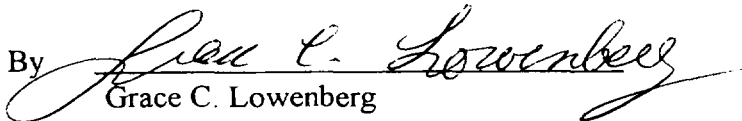
RESOLUTION NUMBER R- 296257

ADOPTED ON APR 09 2002

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of the City, an Agreement for Removal Action with the U.S. Environmental Protection Agency, to implement the Quince Street Burn Site Removal Action Plan, under the terms and conditions set forth in the Agreement for Removal Action on file in the office of the City Clerk as Document No. RR- 296257.

BE IT FURTHER RESOLVED, that the expenditure of an amount not to exceed \$1,300,000 from Refuse Disposal Enterprise Fund No. 30244, CIP 32-010.0, Annual Allocation - Unclassified Disposal Sites, is hereby authorized, solely and exclusively to provide funds for the above agreement.

APPROVED: CASEY GWINN, City Attorney

By 
Grace C. Lowenberg
Deputy City Attorney

GCL:mb
03/29/02
Aud.Cert:2200976
Or.Dept:ESD
R-2002-1291
Form=auagr.frm

Passed and adopted by the Council of San Diego on April 9, 2002 by the following vote:

**YEAS: PETERS, WEAR, ATKINS, MADAFFER, STEVENS, MAIENSCHIN, FRYE
INZUNZA, MAYOR MURPHY**

NAYS: NONE

NOT PRESENT: NONE

VACANT: NONE

AUTHENTICATED BY:

DICK MURPHY

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: Manuel E. Ketcham, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-296257, passed and adopted by the Council of The City of San Diego,
California on April 9, 2002.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: Manuel E. Ketcham, Deputy



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

April 22, 2002

Grace Lowenberg
Deputy City Attorney
City of San Diego
1200 Third Avenue, Suite 1100
San Diego, California 92101-4100

Gilbert Sanchez
San Diego City Clerk's Office
202 C Street, MS 2A
San Diego, California 92101

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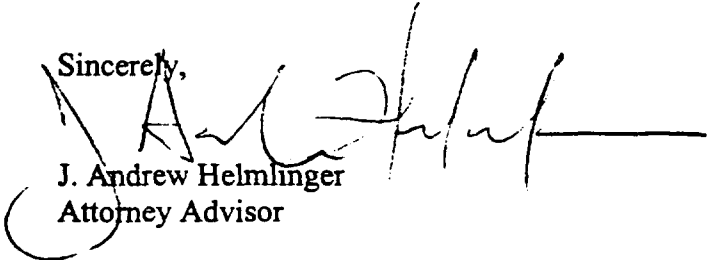
SF Acctg
U.S. EPA, Region 9

Re: Agreement for Removal Action

Dear Ms. Lowenberg and Mr. Sanchez:

Please find enclosed executed drafts of the Agreement for Removal Action for the Quince Street Burn Site, in San Diego, California. As instructed, I have directed the duplicate original and one original copy to the San Diego City Clerk's Office. I also am providing a copy directly to Ms. Lowenberg, for her records. According to the terms of the Agreement for Removal Action, the effective date is May 1, 2002. On behalf of the Environmental Protection Agency, we thank the City of San Diego and its representatives for their work and dedication to protecting human health and the environment.

Sincerely,


J. Andrew Helmlinger
Attorney Advisor

cc: Barbara Lee, EPA